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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

COUNTY OF LOS ANGELES,

Plaintiff and Respondent,

v.

SAFETY NATIONAL CASUALTY
COMPANY,

Defendant and Appellant.

B234538

(Los Angeles County
Super. Ct. No. SJ003312)

APPEAL from an order of the Superior Court of Los Angeles County.

Karla Kerlin, Judge. Affirmed.

E. Alan Nunez for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, Brian T. Chu, Principal Deputy County
Counsel, for Plaintiff and Respondent.

Defendant Safety National Casualty Corp. (Surety) appeals the trial court's denial of its motion to set aside a summary judgment, discharge a bail bond forfeiture and exonerate bail. Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 31, 2008, Surety posted a \$30,000 bail bond for the release of Marco Scataglini from custody pending his trial on criminal charges. On February 26, 2008, Scataglini failed to appear in court as ordered, and the bail was declared forfeited. A summary judgment in the amount of \$30,300, including court costs, was entered against Surety on March 11, 2009.

After Surety's motion to set aside the summary judgment was denied, Surety filed a notice of appeal of that order and of the summary judgment on October 20, 2009; American Contractors Indemnity Company (American Contractors) posted an appeal bond on November 17, 2009, securing the amount of the judgment, plus accrued interest, in the event Surety was unsuccessful on appeal. On December 16, 2010, Division Four of this District Court of Appeal dismissed the appeal as untimely. The remittitur issued on February 16, 2011.

On May 24, 2011, Surety filed a second Notice of Motion and Motion to Set Aside Summary Judgment; Discharge Forfeiture and Exonerate Bail, claiming that, pursuant to Penal Code section 1306, subdivision (f), the two year period for enforcement of the judgment expired on March 11, 2011, two years after its entry. That motion was heard and denied on June 17, 2011. Surety appeals the denial of the motion.

DISCUSSION

Penal Code section 1306, subdivision (f), provides: "The right to enforce a summary judgment entered against a bondsman pursuant to this section shall expire two years after the entry of the judgment." Surety claims that, after the expiration of this two year enforcement period, the judgment was void. Consequently, Surety maintains that

the trial court was required to vacate the judgment upon Surety's motion, and erred in failing to do so. The argument lacks merit.

In *County of Orange v. Classified Ins. Corp.* (1990) 218 Cal.App.3d 553, on facts similar to those presented here, the Fourth District Court of Appeal ruled that, even if the judgment creditor's right to enforce a judgment has expired, and the judgment debtor is entitled to a permanent stay of execution, the court may not vacate the judgment itself. "Under well-established case law, a valid, final judgment is not void simply because, over passage of time, it becomes unenforceable." (*Id.* at p. 559.) Consequently, the trial court did not err in denying Surety's motion to vacate the judgment.

We note that, with regard to the question of whether the County is entitled to recover the amount of the judgment, it does not matter whether Surety prevailed on its motion or not. Because Surety obtained an appeal bond in the County's favor in order to appeal the summary judgment, the County need never enforce the summary judgment. And the obligation of the appeal bond does not depend upon the enforceability of the underlying judgment, for "[t]he obligation of the sureties is upon the undertaking, an instrument in writing, not upon the judgment. Liability upon such an undertaking accrues from the affirming of the judgment to which it relates and is barred four years thereafter." (*Charles F. Harper Co. v. DeWitt Mortgage & Realty Co.* (1938) 10 Cal.2d 467, 470.) "By signing an undertaking upon appeal, a surety consents that judgment may be entered against him on motion for the amount of the judgment as affirmed [citation], and he becomes a party to the action for the limited purpose of giving the court jurisdiction to render and enforce a judgment against him [citation]. In effect, the bond is a stipulation for judgment upon a certain contingency." (*Id.* at p. 469; accord *Merritt v. J.A. Stafford Company* (1968) 68 Cal.2d 619, 623-624.)

DISPOSITION

The order is affirmed.

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ARMSTRONG, Acting P. J.

We concur:

MOSK, J.

KRIEGLER, J.